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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.606(b),)

Table of Allotments,)

Television Broadcast Stations.)

(Gainesville, Florida))

MM Docket No. 04-31

RM-10852

To: Office of Secretary
Attn: Chief, Video Division
Media Bureau

REPLY COMMENTS IN SUPPORT OF NOTICE OF PROPOSED RULE MAKING

Gainesville Channel 61 Associates, LLC ("GCA"), applicant for a new NTSC television station on Channel 61, Gainesville, Florida,¹ by its counsel, hereby replies to the Comments filed by Tampa Bay Television, Inc. ("Tampa Bay") and Post-Newsweek Stations Orlando, Inc. ("Post-Newsweek"), respectively, in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding, MB Docket No. 04-31, RM-10852 (released February 20, 2004) (the "*NPRM*").² As GCA has demonstrated, the proposed allocation of Channel 29 at Gainesville would serve the public interest by introducing a new full-power television service to the Gainesville television market. Neither Tampa Bay, nor Post-Newsweek,

¹ KB Prime Media LLC ("KB Prime") and Television Capital Corporation of Gainesville ("TCCG") each filed competing applications for a new NTSC facility on Channel 61 at Gainesville, Florida. Pursuant to a Settlement Agreement, KB Prime agreed to dismiss its application and join with TCCG to become 50% owners of GCA. The parties filed a Joint Request for Approval of Settlement Agreement with the Commission on January 30, 1998.

² GCA also submitted comments in this rule making proceeding reiterating its interest in the allocation of Channel 29, Gainesville, Florida. As stated in those comments, if the Commission

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has presented any substantive basis whatsoever that would preclude the allocation of Channel 29 as proposed in the *NPRM*. Accordingly, the Commission should expeditiously substitute and allot Channel 29 at Gainesville, Florida. The comments of the parties are discussed below.

Tampa Bay Comments

By its comments, Tampa Bay suggests that the existing interference caused to the proposed Channel 29 allocation be considered as the baseline of interference for future maximization studies by other stations. Similarly, Tampa Bay suggests that if the rule making is adopted, the Commission should establish the filed antenna pattern and effective radiate power as part of the allotment. GCA does not object to Tampa Bay's suggestions and therefore Tampa Bay's comments do not present any basis for delaying or denying action on the *NPRM*.

Post-Newsweek Comments

Post-Newsweek states that it is the licensee of a television translator operating on Channel 29 licensed to Ocala, Florida, call sign W29AB. As such, Post-Newsweek anticipates that the proposed full-power television station on Channel 29 at Gainesville will preclude W29AB's continued operation on Channel 29, and suggests that the public interest would be better served by elevating the considerations of a secondary, low power service over the proposed addition of a new primary television station to the Gainesville market. Post-Newsweek's comments are unpersuasive, for, as it is forced to concede,³ W29AB is a secondary service, which must yield to any changes in the TV Table of Allocations that preclude its

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adopts the proposed substitution of Channel 29 for Channel 61 at Gainesville, GCA will modify its pending application accordingly.

³ Post-Newsweek Comments at 5.

continued operation.⁴ By definition, secondary services, including television translator stations, are subordinate to full-power stations, and thus, the existence of an on-channel translator will not prevent the allocation of a new full-power television station. The Commission's rules state very clearly that changes to the TV Table of Allotments or Digital Television Table of Allotments and authorizations to construct new TV broadcast analog or DTV stations "may be made without regard to existing or proposed low power TV or TV translator stations."⁵ Furthermore, the Commission's Rules make clear that "where such a change results in a low power TV or TV translator station causing actual interference to reception of the TV broadcast analog or DTV station, the licensee or permittee of the low power TV or TV translator station shall eliminate the interference or file an application for a change in channel."⁶ Post-Newsweek has cited nothing that would undermine these bedrock principles of FCC policy and practice.

In addition, Post-Newsweek's suggestion that GCA's proposal is somehow procedurally defective because it would require W29AB to move to a different channel falls short of the mark. GCA's thorough engineering review following the freeze on new allocations on Channels 60-69 yielded Channel 29 as the best option for the preservation of the allotment of a new full-power television service in Gainesville. While GCA undoubtedly considered the existence of W29AB in its search of the spectrum in the area, petitioners for new full power allocations are not required to make any specialized showing, nor conduct an exhaustive search for a channel unoccupied by a secondary service. The Commission's November 22, 1999 Public Notice required petitioners to consider authorized LPTV and TV translator stations only "to the extent

⁴ 47 C.F.R. §74.702(b).

⁵ 47 C.F.R. §74.702(b).

⁶ Id.

possible.”⁷ Post-Newsweek’s assertion that the Commission’s November 22, 1999 Public Notice required GCA to make some sort of showing or explicitly discuss the potential impact on W29AB is simply erroneous, as such a requirement does not exist in the Public Notice or the Commission’s Rules. Similarly, its suggestion that the service of a translator station should be preferred over a new primary station is simply unsustainable in light of the Commission’s Rules and clear order of service priorities, as discussed above.

Ultimately, it is a better use of scarce spectrum resources to allocate Channel 29 for a new full power service to a larger service area, rather than to allow a television translator to continue rebroadcasting the programming of an existing station to a small portion of that area. The addition of a new full-power station to the Gainesville market will increase the programming diversity and viewing options available to the public. In contrast, W29AB merely rebroadcasts existing programming, which is already widely available, and will continue to be available, via its parent station WKMG-TV and via cable. While W29AB may have operated on Channel 29 for some time, it is in the public interest to move its operations, if necessary, in order to make room for a new, full-power station. If and when W29AB causes interference to the proposed Channel 29 operation, the translator will simply relocate to another channel and continue its operations per the Commission’s Rules. As Post-Newsweek acknowledges, the Commission’s rules afford displaced translator stations a priority in applying for a new channel in order to continue operations.⁸

⁷ Public Notice, DA 99-2605 (released November 22, 1999) at 5.

⁸ Post-Newsweek Comments at 3; 47 C.F.R. § 73.3572.

Furthermore, Post-Newsweek's suggestion that grant of a new NTSC station is inconsistent with the DTV transition is unavailing.⁹ Previously, the Commission has determined that the public interest is best served by continuing to process and grant long-pending applications and petitions for new NTSC authorizations such as GCA's.¹⁰ Moreover, the Commission has afforded new NTSC stations without a paired DTV channel the opportunity to either begin operating digitally immediately or to flash-cut to digital operations at some point in the future.¹¹ In this manner, new NTSC stations, such as that proposed in the instant rule making proceeding, will provide immediate service to the public in either analog or digital. Ironically, preserving W29AB's operations as Post-Newsweek proposes would do nothing to further the DTV transition.

⁹ Post-Newsweek Comments at 4.

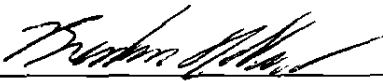
¹⁰ See Reallocation of Television Channels 60-69, the 746-806 MHz Band, Report and Order, 12 FCC Rcd 22953 (1998) (recognizing that parties with pending applications and/or petitions for new full-service NTSC television stations had invested substantial time, money, and effort in the applications and petitions, and determining that the Commission would afford such parties an opportunity to amend their proposals to specify a channel below Channel 60, rather than simply dismissing the pending applications and petitions outright).

¹¹ See e.g., Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order, 13 FCC Rcd 6860 (1998) at ¶¶ 11-15 (permitting new NTSC applicants without a paired DTV channel the option of operating digitally from the beginning or to flash-cut to DTV at some point in the future, and stating "[a]llowing these NTSC applicants to participate in the conversion to DTV will serve the public interest.").

Thus, the allocation and grant of a new NTSC station on Channel 29 is fully consistent with the Commission's articulated goals and will serve the public interest by introducing a new full-power service to the Gainesville market. Accordingly, GCA respectfully requests that the Commission expeditiously grant the proposed rule making to allot NTSC Channel 29 at Gainesville, Florida.

Respectfully submitted,

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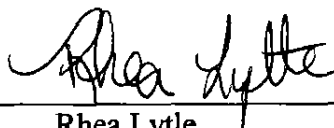
Date: April 27, 2004

CERTIFICATE OF SERVICE

I, Rhea Lytle, a secretary with the law firm of Shaw Pittman LLP, do hereby certify that a copy of the foregoing **"REPLY COMMENTS IN SUPPORT OF NOTICE OF PROPOSED RULE MAKING"** was mailed, first class, postage prepaid this 27th day of April 2004 to the following:

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A handwritten signature in cursive script, appearing to read "Rhea Lytle", is written over a horizontal line.

Rhea Lytle

*Via Hand Delivery